

In this case the contract was to supply and install the escalators. They were never commissioned nor tested to the satisfaction of the main contractor and the architects. Accordingly, the property in the escalators never passed to the defendants.

*Claim allowed.*

Solicitors: *Drew & Napier; Joseph Tan Jude Benny & Co*

Reported by *Azra Moiz*

## Seow Francis v Comptroller of Income Tax

HIGH COURT (SINGAPORE) — CRIMINAL MOTION NO 32  
OF 1988  
LAI KEW CHAI J  
12 JUNE 1990

*Criminal Procedure — Transfer of criminal case from subordinate courts to High Court — Questions of law of unusual difficulty — Applicant a politician and professional person — Criminal Procedure Code (Cap 68, 1985 Ed), s 185(1)(b)*

The appellant was charged with four counts of evasion of income tax under s 96(1)(a) and two counts under s 96(1)(d) of the Income Tax Act (Cap 134, 1985 Ed). They were due to be heard from 5 to 23 December 1988 in the subordinate courts. The applicant applied for an order that the summonses be transferred from the subordinate courts to the High Court pursuant to s 185 of the Criminal Procedure Code (Cap 68, 1985 Ed), on the ground, inter alia, that there were questions of law of unusual difficulty to be tried.

**Held**, dismissing the application:

(1) The only two issues before the court would be whether the applicant had omitted to declare certain earned income in his income tax returns and, if he did, whether the omission was wilful. District judges are perfectly competent to try the sort of cases with which the appellant was concerned.

(2) On the applicant's contention that the matters should be heard in the High Court, bearing in mind that due to the grave consequences to him as a politician and professional, public interest was involved, the court was of the view that the real question was whether this court could fairly and legitimately treat politicians who were charged differently from accused persons who were not politicians. All accused persons should be treated equally regardless of status.

### Cases referred to

- 1 *Measor & Anor v PP* [1972] 1 MLJ 195 (folld)
- 2 *Wong Hong Toy & Anor v PP* [1986] 2 MLJ 336 (folld)

### Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) s 185(1)(a), (b), (c)  
Income Tax Act (Cap 134, 1985 Ed) s 96(1)(a), (d)

*VK Dube* for the applicant.

*Lawrence Ang (Yong Ing Loong with him)* for the respondent.

*Cur Adv Vult*

- A** **Lai Kew Chai J:** By this criminal motion, the applicant applied for an order that Income Tax Summons Case Nos 90142 to 90147 of 1988 be transferred from the subordinate courts and heard in the High Court pursuant to s 185 of the Criminal Procedure Code (Cap 68, 1985 Ed). At the conclusion of the hearing of the criminal motion, I held that the application did not, in my judgment, come within s 185(1)(a), (b) or (c) of the CPC and accordingly dismissed it. I indicated that I would give my reasons later. This I now do.

For present purposes, the relevant statutory provisions in the CPC which require recital are as follows:

- C** 185(1) Whenever it is made to appear to the High Court that —  
(a) a fair and impartial inquiry ... trial cannot be had in any criminal court subordinate to it;  
(b) some question of law of unusual difficulty is likely to arise; or
- D** ...  
(e) such an order is expedient for the ends of justice ..., it may order that —  
...  
(ii) any particular criminal case shall be transferred to and tried before the High Court.
- E** The appellant was charged with four counts of evasion of income tax under s 96(1)(a) and two counts under s 96(1)(d) of the Income Tax Act (Cap 134, 1985 Ed). The relevant income tax summonses were due to be heard on 5 December 1988 to 23 December 1988 in Court No 10 of the subordinate courts. In support of the criminal motion, the applicant filed an affidavit which contained 40 paragraphs. As I was satisfied that it contained irrelevant and scandalous matters, pursuant to O 41 r 6 of the Rules of the Supreme Court 1970, I ordered that except for eight paragraphs the other paragraphs of the affidavit be expunged.
- G** The first contention of the applicant was that there were questions of law of unusual difficulty to be tried in this case, within the meaning of s 185(1)(b) of the CPC. However, an analysis of the charges would disclose that the only two issues before the trial courts would be whether the applicant had omitted to declare certain earned income in his income tax returns and, if he did, whether the omission was wilful. It is beyond dispute that district judges are perfectly competent to try the sort of cases with which the appellant was concerned: see *Measor & Anor v PP*.<sup>1</sup>

- I** The applicant's second contention was based on his status as a non-constituency Member of Parliament and as a professional person. In the penultimate paragraph of his affidavit the applicant asserted that 'previous prosecutions of political figures in the subordinate courts and their erroneous convictions led to disquiet and allegations of executive interference in the subordinate courts judi-

ciary'. He then concluded in these terms: 'In order to avoid further allegations from being made, it is my firm belief that the said matters be heard by a High Court. Further, bearing in mind the grave consequences to me as an NCMP and professional person in addition to the possibility of a custodial sentence I believe this case involves matters of public interest.' It appeared to me that it was fashionable to make scurrilous allegations of this kind. The law must take its course. The real question was whether this court would fairly and legitimately treat politicians who were charged differently from accused persons who were not politicians. As was held by the Court of Criminal Appeal in *Wong Hong Toy & Anor v PP*<sup>2</sup> at p 339: 'It is beyond question that all accused persons should be treated equally regardless of status.'

The final ground of the applicant as contained in para 40 of the applicant's affidavit was that if he was tried in the High Court and convicted he would have a further recourse to the Judicial Committee of the Privy Council. This ground was rejected by the Court of Criminal Appeal in *Wong Hong Toy & Anor v PP*<sup>2</sup> for the reasons they gave and I need not repeat them in this judgment.

The criminal motion was accordingly dismissed.

*Application dismissed.*

Solicitors: *Ann Tan & Associates.*

Reported by *Zarinah Marican*

## Jeyaretnam JB v Public Prosecutor

HIGH COURT (SINGAPORE) — CRIMINAL MOTION NO 62  
OF 1989  
CHAN SEK KEONG J  
8 JUNE 1990

*Criminal Procedure — Questions of law of public interest — Fundamental rights — Freedom of speech — Supreme Court of Judicature Act (Cap 322, 1985 Ed), s 60*

*Criminal Law — Providing public entertainment without a licence — Public Entertainments Act (Cap 257, 1985 Ed), s 18(1)(a)*

The applicant was convicted and fined \$3,500 by the district court for having provided public entertainment without a licence, contrary to s 18(1)(a) of the Public Entertainments Act (Cap 257, 1985 Ed). His appeal against conviction was dismissed while the fine was reduced to \$1,500. He then applied by way of criminal motion to have certain questions of law referred for decision to the Court of Criminal Appeal on the ground that they were of public interest, pursuant to s 60 of the Supreme Court of Judicature Act (Cap 322, 1985 Ed). The questions of law which the appellant sought to have referred to the Court of Criminal Appeal were:

- A (1) Whether on the evidence adduced by the prosecution in Police Summons No 0068 of 1987, the speech of the appellant at the opening of the Workers' Party's premises constituted 'public entertainment' within the meaning and scope of that term as defined in the Public Entertainments Act.
- (2) Whether the purported decision of the public entertainments licensing officer to refuse the Workers' Party a licence was a nullity for the following reasons:
  - B (i) that the grounds for the refusal were not shown to be grounds upon which a licence may be lawfully refused under the Constitution, and the refusal in consequence was a violation of art 14(1) of the Constitution which secured the right of the appellant to free speech;
  - (ii) the refusal was not the decision of the officer to whom Parliament had delegated the decision on applications under the Act.
- C (3) Where the public entertainments licensing officer denies a licence under the Public Entertainments Act in violation of art 14(1) of the Constitution, whether the applicant to whom the licence is so denied commits any offence if he exercises his constitutional right to freedom of speech on the occasion for which the licence was sought and wrongfully denied.
- D

The applicant contended that all his questions were serious questions of law on which his conviction for a grave offence depended, and accordingly they were questions of public interest.

E Held, dismissing the application:

(1) The offence in respect of which this application was made was not a grave offence. The offence does not imply a lack of honesty or integrity or any of the qualities that make ordinary persons shun the company of the offender. If the gravity of the offence was a pre-condition for the exercise of the court's power under s 60, this application would have failed on this ground only.

F (2) In general, any question which raised constitutional rights would be one of public interest which ought to be decided, whenever appropriate. However in this case, the applicant's questions did not raise constitutional issues.

G (3) Question (1) as to whether the making of a speech to a gathering in a public place to which all members of the public have unrestricted access constituted public entertainment within the meaning of that expression in the Act was really a question of fact once it was determined as a matter of statutory construction that a speech made to such a gathering was an address. Section 2 of the Act defined 'public entertainment' to include an address. There was no doubt that the appellant 'addressed' the gathering. Accordingly this question was substantially one of fact rather than of law, the question being whether the appellant did address the gathering.

H (4) Question 2(i) assumes that the grounds for the refusal of the application for a licence were not within the grounds specified in the Constitution. The fact was that no reason was given by the licensing officer for refusing the licence nor did the applicant request him to give reasons. Accordingly there was no factual foundation on which this question of law could be raised, assuming it was one of public interest. The applicant's failure to challenge the constitutional validity of the Public Entertainments Act or the scheme of licensing prescribed thereunder meant that the Public Entertainments Act was law which Parliament was by art 14(2) authorized to enact for the purpose of imposing on the right to freedom of speech and expression conferred by art 14(1) such restrictions as it